

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 154 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

AHMEDABAD MFG. CALICO PRINTINGCO. LTD.

Appearance:

Mr. Pranav G Desai for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 01/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-Tax Appellate Tribunal,
Ahmedabad has forwarded the statement of facts in respect
of the following two questions under section 256(2) of

the Income-tax Act, 1961.

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in directing the allowance of the amount of Rs. 10,78,000/- based on the award of the Industrial Tribunal dated 30.11.1971 in computation of the income of the assessee for the assessment year in question?

2. Whether salary and wages of Rs. 10,78,000/payable under Industrial Tribunal's award dated 30.11.71 are allowable in computing the income of the assessee for assessment year in question when the said amount was not debited in the books of the relevant assessment year and the further proceedings challenging the award were pending before the Supreme Court ?"

2. The relevant assessment year is 1974-75.

In the return of income which was filed on 4.10.74, the assessee in the statement of income, salaries, wages etc. of Rs.10,78,000/- arising on account of the award dated 30.11.71 given by the Industrial Tribunal were claimed as a deduction. The ITO rejected the claim on the ground that the amount in question was neither debited in the books of the company nor was it paid to the employees. The disallowance so made was confirmed by the Appellate Assistant Commissioner who held that the decision of the Hon'ble Supreme Court in *Kedarnath Jute Manufacturing Co.Ltd. vs. CIT*, reported in 81, ITR, 363 on which reliance was placed by the assessee, did not help the assessee because there was no liability 'in presenti'. The AAC noted that the assessee had not accepted the award and approached the Supreme Court against it. In the note forming part of the account, the assessee had stated that there was an estimated liability of Rs. 26 lakhs in respect of the award made by the Industrial Court which was disputed by the company and the proceedings thereunder were pending in the Supreme Court. It was held that the claim of the assessee was in respect of an award which was disputed by the assessee and it could not therefore, be considered as a claim 'in presenti'.

3. In appeal before the Tribunal, the Tribunal held that the award of the Industrial Tribunal was binding on the assessee and there was a clear liability 'in presenti', so far as the assessee was

concerned. It was held following the decision of the Supreme Court in Kedarnath Jute Manufacturing Company Ltd. (Supra) that the assessee following mercantile system of accounting was entitled to deduction from the profits and gains of the business, such liability which had accrued during the period for which the profits and gains were being computed. The Tribunal therefore, held that the assessee was entitled to deductions claimed in respect of the amount in question.

4. The learned counsel appearing for the Revenue urged that the award was made on 30.11.71 and the liability had, therefore, arisen on the basis of mercantile system in the previous year in which that date fell and was assessable in the assessment year 1972-73. In the alternative, he submitted that since admittedly, the said amount was neither paid to the employees nor was it deposited in the accounts of the previous year relevant to the assessment year 1974-75, the assessee was not entitled to any deduction.

5. The contention that because the award was made on 30.11.71, the liability should be taken to have arisen in the previous year 1971-72 and not in the subsequent previous year of 1972-73 was never raised at any point of time till this moment. The contention proceeds on an erroneous footing that the award of the Labour Court operates on the date on which it is announced. As provided by section 17 of the Industrial Disputes Act, 1947, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal is required to be published within a period of 30 days from the date of its receipt by the appropriate Government. As provided by sub-section (2) of section 17, subject to the provisions of section 17-A, award published under sub-section (1) shall be final and not be called in question by any Court in any manner whatsoever. Section 17-A of the Industrial Disputes Act provides that an award shall become enforceable on the expiry of 30 days from the date of its publication under section 17. As provided under sub-section (4) of section 17-A, subject to the provisions of sub-section (1) and sub-section (3) thereof regarding enforceability of the award, the award becomes operative with effect from the date as may be specified therein and where there is no date specified it would become operative on the date when the award becomes enforceable under sub-section (1), or sub-section (3), as the case may be. The contention that the award became enforceable and operative earlier to the previous year in which the claim is made was never raised and is not warranted simply on the basis of the date of the award in

view of the provisions of section 17 and 17-A of the Act. Therefore, this contention cannot be countenanced for the purpose of deciding the question referred to us.

5. The liability to make the payment pursuant to the said award had arisen, and the award not having been stayed, it became operative and was enforceable against the assessee in the relevant previous year. Therefore, since the liability had arisen under the award and had become enforceable it could not be said that it was not a liability 'in presenti'. Merely because the award was challenged by the assessee, that itself did not make it inoperative or unenforceable and the assessee remained liable to make payment as per the award in the relevant previous year. In *Kedarnath Jute Manufacturing Co.Ltd.* (Supra), the Supreme Court in terms held that the question whether the assessee is entitled to a particular deduction or not will depend on the provisions of law relating thereto and not on the view which the assessee might take of his rights; nor can the existence or absence of entries in his books of accounts be decisive or conclusive in the matter. It was held that the liability would remain intact even after the assessee had taken appeals to higher authorities or courts, which failed. In our opinion, the Tribunal rightly applied the ratio of the decision in *Kedarnath Jute Manufacturing Co.'s* case for holding that the assessee was entitled to claim deduction in respect of the said liability which had arisen under the award. We therefore hold that the Tribunal committed no error in holding that the amount that was payable under the award by the assessee was required to be computed as income of the assessee for the assessment year in question notwithstanding that it was not debited in the books of the relevant previous year and in directing that the assessee should be allowed deduction in respect of the said amount. Both the questions referred to us are therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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